Supreme Court, U.S.
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NO: 84-931

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

DAVID K. GUENTHER

Petitioner,

v

MARK HOLMGREEN and
CITY OF BLACK RIVER FALLS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT, CITY OF BLACK RIVER FALLS

Gene B. Radcliffe
LAABS & RADCLIFFE, S.C.
107 Main Street
P.O. Box 219
Black River Falls, WI 54615
715/284-9421

Counsel For Respondent,
City of Black River Falls

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OPINIONS BELOW

The memorandum and order of the district court granting Respondents' motions for summary judgment is reported at 573 F. Supp. 599 (W.D. Wis. 1983). The opinion of the court of appeals is reported at 738 F. 2d 879 (7th Cir. 1984).

JURISDICTION

This is a petition from the judgment of the United States Court of Appeals for the Seventh Circuit entered on July 9, 1984. No petition for rehearing was filed. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. s. 1254(1).

STATEMENT OF THE CASE

Petitioner, David K. Guenther, brought this s. 1983 damage action claiming his civil rights were violated

when he was arrested by Respondent, Mark Holmgreen, (Holmgreen) a police officer for Respondent, City of Black River Falls, Wisconsin (City).

The district court, Honorable John C. Shabaz presiding, granted motions by the City and Holmgreen for summary judgment on the grounds:

1) Petitioner was not deprived of due process because of the availability of state court remedies for the alleged deprivations; and

2) Petitioner was estopped from claiming his arrest was without probable cause because of a prior state court determination of the issue against him.

Petitioner appealed from the summary judgment granted by the district court. The court of appeals held that these conclusions were not erroneous.

The facts are adequately set forth in the district court and court of appeals opinions as summarized below.

According to Petitioner's complaint, he was arrested by Holmgreen, acting as a police officer for the City. He alleges he was conducting himself peaceably at a summer festival when he was struck by another person. He alleges he was arrested by Holmgreen without probable cause for disorderly conduct and resisting arrest.

Petitioner claims he was physically restrained, handcuffed and jailed. He alleged he was not advised of his right to counsel, not allowed to contact an attorney, and not informed of his privilege against self-incrimination.

Petitioner alleges Holmgreen set bail and then refused to accept it from

his wife, resulting in his being jailed overnight and released the next morning.

The City is alleged to have negligently failed to provide adequate and proper training for and supervision over Holmgreen.

Petitioner was subsequently charged with the crimes of disorderly conduct and resisting arrest. He moved to dismiss the charges on the ground that there was no probable cause for his arrest. The state court held an evidentiary hearing and denied the motion after determining that there was probable cause to arrest.

After trial of the criminal charge Petitioner was found not guilty of disorderly conduct and the jury was unable to reach a verdict on the resisting arrest charge.

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his wife, resulting in his being jailed overnight and released the next morning.

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Additional facts appear from the

affidavits filed in support of the motions for summary judgment. Holmgreen transferred custody of Petitioner to another municipality's booking officer at the jail. Petitioner's transfer to another jail was directed by and accomplished by others. Petitioner was offered a phone call but refused.

After his trial Petitioner brought this action claiming that his arrest, allegedly made without probable cause and based on Holmgreen's misrepresentations, violated his rights. He apparently has abandoned claims based on right to counsel and failure to "Mirandize" him. Throughout his appeals he has principally challenged the conclusion that he was not denied due process and was collaterally estopped from relitigating the probable cause issue.

REASONS FOR DENYING THE WRIT

THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT.

This court should not review this case because the court of appeals decision does not conflict with decisions from other courts of appeals and the court correctly applied existing controlling law to decide the case.

The principal question in evaluating a 1983 action is whether the facts establish any wrongdoing amounting to a constitutional deprivation. The district court properly viewed this case in light of that standard. The court evaluated the due process claim by finding that Parratt v. Taylor, 451 U.S. 527 (1981), controlled because it had held that there was no due process claim where there were state court remedies.

The district court found there were state court tort remedies available to Petitioner for his claims. The court also properly noted that under the facts perhaps these were not the correct defendants.

The court of appeals concluded that the availibility of adequate state tort remedies is all that due process requires in this context.

The district court also found that the facts established no right to counsel or self-incrimination violation based on State Bank of St. Charles v. Camic, 712 F. 2d 1140 (7th Cir. 1983). As noted, petitioner apparently has abandoned these claims.

Finally, the district court applied collateral estoppel regarding the prior probable cause to arrest determination.

The court evaluated all four prongs of the Whitely v. Seibel, 246 F. 2d 245 (7th Cir. 1982) test and concluded there were good legal and policy reasons for finding that the Petitioner was collaterally estopped from relitigating the issue.

Great deference should be given to the extensive, well-reasoned decisions below. As the district court noted, even though it did not sit in review of the state court, the standard of review is low: whether there was competent evidence to support the factual determination.

That standard is met on the face of both opinions. The courts held that not only was there no federal cause of action on the facts, but any action which depended on probable cause to arrest was foreclosed by a prior determination.

There are sufficient facts to support these conclusions, they are accurate statements of the law and they show no abuse of discretion. They should be upheld.

A. Petitioner was not deprived of due process.

Petitioner's claim is that he was deprived of liberty without due process because he was arrested without probable cause.

Where there are state court remedies for arrests without probable cause there is no federal due process violation. Here there are state court remedies. Strong v. Milwaukee, 38 W. 2d 564 (1968).

It makes no difference whether the remedy is for an intentional or negligent act, as long as there is one. Parratt v. Taylor, supra; State Bank of St. Charles

v. Camic, supra. As long as there is post-deprivation due process in state court a federal suit is foreclosed.

False imprisonment is defined as the unlawful restraint by one person of the physical liberty of another. Strong, supra at 566; Wisconsin Jury Instructions - Criminal 2100 - False Imprisonment. Unlawful restraint is further defined by the jury instruction as "without legal excuse or just cause, without authority, a restraint which the person charged therewith had no right to create."

False arrest is defined as detention without "reasonable grounds" to believe the person is committing or has committed a crime. Sec. 968.07, Wis. Stats.; Wisconsin Jury Instructions - Criminal 2115 - False Arrest. Probable cause, reasonable cause and reasonable grounds

all mean the same thing. Kluck v. State, 37 W2d 378 (1967); U.S. v. Walker, 246 F. 2d 519, 526 (7th Cir. 1957); Draper v. U.S., 358 U.S. 307 (1959).

Petitioner's allegations would fit either of these definitions, so he has state court remedies available to him for any deprivations related to his arrest. He has therefore not been denied due process.

B. Petitioner is precluded from relitigating probable cause to arrest.

Not only does Petitioner have state court remedies for false arrest and imprisonment or malicious prosecution, but his facts fail to show a claim for arrest without probable cause. The record discloses that he has already litigated and lost that issue.

The due process evidentiary hearing

challenging his arrest was correctly analyzed by the district court and court of appeals as foreclosing an action in which it is an element.

Petitioner had a full and fair opportunity to litigate the matter. Allen v. McCurry, 449 U.S. 90 (1980). The criteria of Whitley v. Seibel, supra, were met.

In his state court criminal case, Petitioner moved to dismiss the proceedings on the basis of probable cause. The state court judge found there was probable cause to arrest and denied the motion.

At the hearing, Petitioner was represented by counsel and contested the sufficiency and integrity of the evidence, challenged the integrity of the witnesses, including Holmgreen, and had the

opportunity to and called witnesses on his own behalf.

The district court evaluated each of the Whitley, supra, criteria:

1. same issues;

2. litigated;

3. judicially determined;

4. judgment dependant on determination of issue.

The issues were the same: probable cause to arrest. Petitioner admits that probable cause for the arrest was what he was challenging in the state court. He then tries to make the integrity/sufficiency distinction which controlled in Whitley. He fails because Whitley was challenging probable cause in a preliminary hearing where the issue is probable cause to believe a crime had been committed and whether the defendant

committed it. That, of course, is a different issue, and not the issue litigated here.

The issues were litigated. As set forth above, the integrity and sufficiency of the evidence were considered, witnesses were called and cross-examined, and arguments made. Petitioner tries to say he is not precluded here because misrepresentations by Holmgreen to the prosecutor were not litigated in that hearing. The state court action for malicious prosecution is available for that claim. He also claims the counsel and bail issues were not considered. No facts support those claims so failure to consider them would be irrelevant. In fact, those matters were actually considered because Holmgreen was cross-examined regarding the alleged

misrepresentations.

Petitioner argues that the court of appeals imposed a legal fiction or made an analytical error in determining that a probable cause challenge "necessarily" requires a ruling on misrepresentation. The court did not so hold. It held that the issue had actually been determined because it had been fully and fairly litigated. It was litigated when the sufficiency and integrity of the evidence was brought into issue in the state court. The analysis therefore did not depart from Allen, but correctly applied it and went a step further in considering all factors involved in the probable cause determination.

The issues were judicially determined. There appears to be no dispute regarding this criteria. The

state court decided there was probable cause to arrest. Petitioner admits that the probable cause to arrest issue was determined, but now says other issues were not, as set forth above.

The state court judgment dismissing the motion, of necessity, depended on determining whether there was probable cause to arrest. There also appears to be no dispute in regard to this criteria. The issue and the decision are identical. A decision that there was no probable cause to arrest would have ended the criminal proceedings.

Since the criteria of collateral estoppel as set forth in Whitley, supra, have been met, the district court properly concluded that Petitioner was precluded from relitigating the issue of probable cause to arrest.

Petitioner does not show any significant difference in the collateral estoppel holdings of Allen, Haring v. Prosise, 103 S.Ct. 2368 (1983) and Migra v. Warren City School District Board of Education, 104 S.Ct. 892 (1984). In fact Haring and Migra only reiterate the deference to state court judgments as to preclusion of issues. The court of appeals decision therefore does not conflict with, but in fact is in complete harmony with those decisions. There is no need to review or correct any incorrect application of established law by the court of appeals.

McCarthy v. Kleindienst, 741 F. 2d 1406 (D.C. Cir. 1984) is not in conflict with the court of appeals decision here. The parties seeking to invoke collateral estoppel were different and the finding

was the opposite on the probable cause issue.

The "stakes" were very different. McCarthy involved equitable relief not the more important issue of monetary damages. Here an even more important issue was involved: Petitioner's liberty. The incentive for full and fair litigation was at its highest in this case, and was being litigated in a much more compelling context.

Finally, McCarthy did not fully develop the legal and factual background for its collateral estoppel decision, it merely noted it in passing in a footnote. This stands in stark contrast to the extensive discussion of the issue in the court of appeals decision here.

Krohn v. U.S., 742 F. 2d 24 (1st Cir. 1984) certainly does not represent a

doctrinal departure from the court of appeals decision here nor the cases it relied on. The court of appeals there was not convinced that the district court had found probable cause for the arrest or that the finding was essential to determine the speedy trial issue before the court. The appeal was from the denial of the defense of immunity. The opinion only mentions in passing that the federal charges were dismissed by the magistrate for want of probable cause. None of the factors relevant to a speedy trial determination related to whether the arrest itself was based on probable cause.

That is not the case here as there is no ambiguity as to the finding by the state or district court that there was probable cause to arrest. Likewise, the determination was essential. Probable

cause was the "linchpin" of Petitioner's entire cause. It was the specific finding involved and its determination was the sole basis for terminating or continuing the case against Petitioner.

Here the court of appeals determined that that the state court had found probable cause and that it was a necessary finding in the context of the state court criminal proceeding.

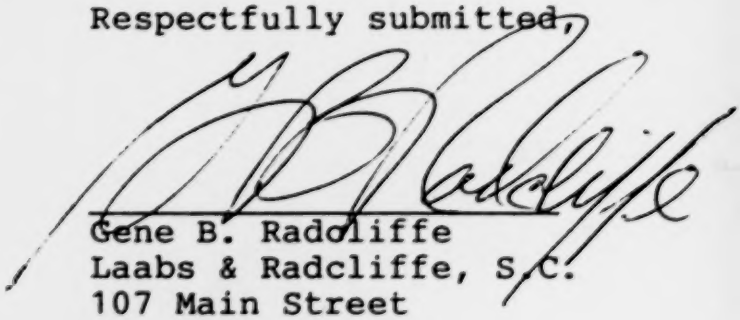
CONCLUSION

The decision of the district court granting summary judgment should be affirmed. Petitioner was not denied due process and is collaterally estopped from relitigating probable cause to arrest.

The court of appeals decision is not in conflict with other decisions and the court correctly applied existing controlling law.

For the above reasons, Respondent, City of Black River Falls, respectfully submits that this is not an appropriate case for review and Appellant's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



Gene B. Radcliffe
Laabs & Radcliffe, S.C.
107 Main Street
Box 219
Black River Falls
Wisconsin 54615
715/285-9421

Counsel for Respondent,
City of Black River Falls